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Chairman: Mr. Yáñez-Barnuevo ..... (Spain)

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The meeting was called to order at 9.40 a.m.

Agenda item 80: Report of the International Law Commission on the work of its fifty-seventh session (*continued*) (A/60/10)

1. **Mr. Wickremasinghe** (United Kingdom) said that the full set of draft articles on the effects of armed conflicts on treaties would provide States with a helpful overview of the topic. It would be interesting to see how elements of State practice informed the Commission's continued work on the subject. The Special Rapporteur was correct to view the topic essentially as an aspect of the law of treaties, rather than as an aspect of the law on the use of force. Draft article 4 was broadly correct because, both in theory and in practice, the intention of the parties to a treaty was likely to be the soundest guide to determining the effect of armed conflict on that treaty, irrespective of whether that intention was expressly stated in a provision or had to be inferred. Draft article 7 required further consideration, since the categories of treaties it listed might not always be readily identifiable, especially when they were defined in very general terms. It was questionable whether certain of the categories, such as treaties relating to the environment, ought to figure in the list at all. In any case, it should be made plain that the implication of continuity did not affect the position with regard to the law of armed conflict as the *lex specialis* applicable in times of armed conflict, even though continuity might suggest the concurrent application of different standards. Draft article 10 was broadly acceptable, but since the topic essentially concerned the operation of the law of treaties, it was not the right place to review the law on the use of force. Of course, an aggressor State should not benefit from its aggression, but terminating or suspending a treaty simply on the basis of the assertion that force had been used illegally was likely to be inimical to the stability of treaty relations.

2. With regard to the topic "Diplomatic protection" he concurred with the Special Rapporteur that consideration of the clean hands doctrine should not form part of the Commission's work, and hoped that the Commission would complete its work on the topic in 2006.

3. The legal issues raised by the fragmentation of international law comprised many of the most complex and challenging questions of contemporary international law. The Study Group's working method had been rather different from that normally followed by the Commission, without any of the usual detailed consultation of Governments. He therefore urged the Study Group and the Commission to proceed with caution. The outcome of the work should be confined to an analytical study on which Governments might wish to comment. Such a study could, where warranted, include the conclusions of its authors. The subject matter did not, however, lend itself to any kind of prescriptive outcome such as would be implied by the terms "guidelines" or "principles".

4. **Mr. Tugio** (Indonesia) said that the Commission played an important role in the codification of international law, but although the subject matter of public international law was of growing relevance to international relations as it widened and became more complex, the Commission should not embark on any new topics before it had completed some of those already included in its programme of work.

5. With regard to the topic "Responsibility of international organizations", the structural diversity of such organizations made it difficult to find a formula which would be suitable for all of them. For that reason, wherever possible, the draft articles should be modelled on the articles on the Responsibility of States for Internationally Wrongful Acts, particularly on those in chapter IV (articles 16 to 19). Caution was, however, needed, because the responsibility of an international organization for the act of a member State had not been examined thoroughly in any international tribunal outside Europe. Draft article 8, paragraph 2, was somewhat controversial, because it raised the status of an organization's administrative and procedural rules to the same plane as its binding resolutions.

6. The topic "Expulsion of aliens" was particularly relevant in the contemporary world, where globalization had led to much greater transboundary movements of people. The topic should include an examination of the situation of migrant workers, taking into account the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, because they too could be considered aliens by the host country, even if they were legally present in its territory. Human rights regimes and other fields of international law clearly had a bearing on the expulsion of migrant workers. For that reason, States must seek to reconcile their national immigration laws with their international legal

obligations, respect for the rule of law and the protection of aliens' fundamental rights.

7. States were under an obligation to provide the fair and just procedures for expulsion to which individuals were entitled under international law. Hardship, violence or unnecessary harm to the alien must be averted and detention should be avoided, save when an alien upon whom an expulsion order had been served refused to leave the country, or tried to elude the control of State authorities. The alien had to be given a reasonable amount of time to settle his or her personal affairs before leaving the country. The draft articles should not cover refusal of admission, internally displaced persons or extradition for the purpose of prosecution, since those were separate sets of issues governed by different legal norms.

8. He was pleased that the Special Rapporteur for the topic "Shared natural resources" had recognized the importance of making explicit reference to General Assembly resolution 1803 (XVII) in the preamble to the draft articles. His Government believed that transboundary aquifers should be subject to the national jurisdiction of the States in whose territory they were located. Arrangements among aquifer States should therefore take priority over any other instrument. The distinction between recharging and non-recharging transboundary aquifers was welcome and in line with the principle of sustainable development. The draft articles should not be modelled solely on the provisions of the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses, since the latter had not yet entered into force, but should be balanced by other approaches.

9. The draft articles on the effects of armed conflicts on treaties should apply only to armed conflicts of an international character. Reference to the *Tadić* case would overextend the ambit of the draft articles to non-international conflicts, which would be inappropriate and inconsistent with draft article 2 (b). His Government would, however, be prepared to widen the scope of the draft articles to include treaties between States and international organizations, since the implementation of such treaties might, in some circumstances, be precluded by an armed conflict.

10. As far as diplomatic protection was concerned, a State had the right to exercise diplomatic protection and to seek a suitable remedy if one of its nationals had suffered injury caused by another State. It was important to remember that diplomatic protection was a sovereign prerogative of the State of nationality of the person concerned and a discretionary right of that country. The Special Rapporteur's constructive approach and his recommendation that the clean hands doctrine should be excluded from the draft articles was likely to lead to a consensus, which would enable the Commission to focus on more practical matters requiring closer attention.

11. **Mr. Samy** (Egypt) said that the preamble to the draft articles on shared natural resources should contain a reference to aquifer States' compliance with international laws and treaties. Such a preambular paragraph might be worded, "Having regard to international legitimacy and international law", or "Convinced that the objectives, principles, institutional regulations and further provisions included in this agreement should be consistent with international legitimacy and international law", or "Proclaiming further the following specific objectives, principles and institutional framework in conformity with the objectives and principles of the Charter of the United Nations and of international law".

12. Although the draft articles took the form of a framework convention setting forth a number of principles and guidelines, it ought to bind any State acceding to it. As the articles it contained would also be regarded as guidance for non-party States and the drafters of regional treaties, they should be carefully couched in precise legal language so that they did not become bones of contention in the future.

13. It would be vital to clarify the relationship between the new draft convention and the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses, because the latter did not refer to aquifers. When it had been drawn up, it had been acknowledged that confined aquifers not linked to any international watercourse were a natural resource and that further efforts would be needed to prepare rules to protect them. Nevertheless, while it was true that the subject matter of the two conventions was absolutely discrete, draft article 4, paragraph 1, of the new convention would be meaningless unless all parties to it had also acceded to the 1997 Convention.

14. Draft article 3 used the expression "arrangement" rather than "agreement" but, from a legal point of view, the word "agreement" would be more apt for a binding international treaty, whereas "arrangement" suggested

a more flexible bilateral or regional mechanism for cooperation. In order to secure the compatibility of the two conventions, draft article 3, paragraph 2, should be amended to read "Parties to an arrangement referred to in paragraph 1 shall consider harmonizing such arrangement where necessary with the basic principles of the present Convention".

15. Draft article 4, paragraph 2, repeated almost word for word article 311, paragraph 2, of the Convention on the Law of the Sea. It might be advisable to use language drawn from that Convention in the draft text on aquifers, notwithstanding the very different nature of the rights and obligations deriving from the Convention and of those relating to aquifers, in order to prevent any conflict in the relationship between earlier treaties and the new draft convention.

16. The principle of equitable and reasonable utilization embodied in draft article 5 probably offered the best means of avoiding disagreement prompted by States' varying notions of national sovereignty over natural resources. That principle might protect the interests of all States parties if it were properly formulated to take all relevant factors into consideration. To that end, the latter would have to be pinpointed and studied. It was right to draw a distinction between recharging and non-recharging aquifers, because plans to develop and use those resources were different and their levels of use and the amounts of water withdrawn from them were also dissimilar. It would, however, be difficult to agree on a term such as "significant harm" unless specific types of harm were identified.

17. It might be helpful if the proposed convention were to spell out in greater detail the institutional framework for cooperation and to mention existing mechanisms which might serve as useful examples in that respect. Since article 35 of the Vienna Convention on the Law of Treaties laid down that "An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing", draft article 13 should indicate that the convention did not impose obligations on non-parties. It was essential to include in the draft convention a reference to the prior notification of planned measures with possible adverse effects along the lines of articles 11 to 19 of the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses and an environmental impact assessment should be made obligatory.

18. He agreed with the Special Rapporteur for the topic "Responsibility of international organizations" that, although States' freedom to issue policy statements should be preserved, it was, at the same time, necessary to restrict individual acts that might affect the rights of third parties. It would be hard, but not impossible, to establish a comprehensive legal framework covering individual acts, because the Vienna Convention on the Law of Treaties had already established a number of principles governing such acts.

19. With regard to the topic "Fragmentation of international law", he concurred with the view expressed in paragraph 485 of the Commission's report (A/60/10) that the topic's implications should be studied in greater depth. Such a study should concentrate on producing general guidelines allowing for a sufficiently flexible interpretation of treaties. It was important to arrive at rules on the application of disconnection clauses. The treaties laying down the objectives of regional integration organizations were always predicated on international law and therefore had to be implemented in accordance with it. It was also vital to preserve the hierarchy of international law in keeping with the Vienna Convention on the Law of Treaties which stated that a treaty was void if it conflicted with a peremptory norm of general international law.

20. The Sixth Committee must take account of all the rules on the expulsion of aliens which were to be found in customary international law, international treaty law, national legislation and State practice, with a view to developing those rules whenever appropriate or possible. The Commission's text must, however, make it absolutely clear that mass or collective expulsions were prohibited.

21. His Government agreed with the views expressed in the tenth report of the Special Rapporteur for the topic "Reservations to treaties" (A/CN.4/558 and Add.1), since they were in conformity with the provisions of the 1969 and 1986 Vienna Conventions on the Law of Treaties. Any further work on reservations to treaties should abide by the framework they provided.

22. **Mr. Hasegawa** (Japan) said that his delegation had been pleasantly surprised to see an entire set of draft articles proposed in the Special Rapporteur's first

report (A/CN.4/550) on the complex topic "Effects of armed conflicts on treaties". Although preliminary, the draft articles provided a useful overview. His delegation wondered whether it was correct under the Charter of the United Nations to assume that there was no difference between an aggressor State and a State exercising the right of self-defence with regard to the legal effect of armed conflict on treaty relations. With regard to the intention of the parties as the criterion for determining the susceptibility of a treaty to termination or suspension in case of armed conflict as proposed in draft article 4, it was not usually the case that States concluding treaties would anticipate the possibility of armed conflict occurring between them, so that other criteria would seem to be necessary. Moreover, it was not clear whether the concepts of suspension and termination should be dealt with in a single article, as they were in draft article 8, since their legal effects might be different; that point required further study. His delegation agreed with the Special Rapporteur that the draft articles were not yet ready to be referred to the Drafting Committee.

23. His delegation would like to commend the Study Group for the progress made on the very ambitious topic "Fragmentation of international law", which was not a subject of academic interest alone but was an important problem that must be addressed by practitioners when negotiating agreements. There was a potential overlap or conflict, for instance, between rules governing international trade and those concerning environmental and cultural issues. Even if the States involved in the rule-making process made an effort to avoid overlap or conflict, ambiguity in the rules governing the law of treaties, especially those relating to *lex specialis*, could cause problems that might undermine the stability and credibility of international law. It was essential for practitioners to have a clear understanding of the relationships among various legal instruments. In that regard, his delegation appreciated the approach taken by the Study Group in concentrating on issues relating to the Vienna Convention on the Law of Treaties.

24. **Mr. Al-Adhami** (Iraq) said his delegation thought that the 14 draft articles on the effects of armed conflicts on treaties proposed by the Special Rapporteur provided a good basis for further work on a very difficult topic. However, it felt that draft article 1 made the scope of application of the draft articles too narrow by limiting them to treaties between States, thus excluding treaties concluded by international organizations. With regard to draft article 2, his delegation favoured the inclusion of non-international armed conflict in the definition of armed conflict, since it would address situations that actually existed and required regulation.

25. Draft article 3 provided that the outbreak of an armed conflict did not ipso facto terminate or suspend the operation of treaties. Although the concept of continuity proposed by the Special Rapporteur was significant for the stability and certainty of international relations, it unfortunately ran counter to the practice of States, which showed clearly that armed conflicts led to the automatic suspension of some kinds of treaty. In fact, it was inconceivable that the parties to an armed conflict would implement all the treaties they had concluded, for obvious reasons. In that light, the draft article was unrealistic and should be redrafted or eliminated.

26. With regard to the indicia of susceptibility to termination or suspension of treaties in case of an armed conflict set forth in draft article 4, his delegation agreed with the criterion of intention, but had reservations about the inclusion in paragraph 2 (b) of the criteria of the nature and extent of the armed conflict in question. If the treaty did not contain provisions revealing the intention of the parties, their intention should be deduced from such elements as the preparatory work of the treaty, the circumstances of its conclusion, the nature of the treaty and how it had been applied.

27. **Mr. Malpede** (Argentina) commended the work of the Special Rapporteur for the topic "Effects of armed conflict on treaties". However, the content of the memorandum by the Secretariat entitled "The effect of armed conflict on treaties: an examination of practice and doctrine" (A/CN.4/550 and Corr.1) was a cause of serious concern to Argentina. In paragraphs 87, 103 and 104 the document referred to matters related to the dispute between Argentina and the United Kingdom concerning sovereignty over the Malvinas, South Georgia and the South Sandwich Islands. Although the double nomenclature (Falkland Islands (Malvinas)) required pursuant to United Nations administrative instructions and editorial directives was used, the footnote also required in those directives concerning the existence of a dispute over sovereignty had been omitted. That omission should be corrected.

28. Moreover, Argentina objected to the use of the word "invasion" in paragraph 103 of the memorandum. The Malvinas, South Georgia and the South Sandwich Islands and the surrounding maritime areas were an integral part of the territory of the Republic of Argentina and were illegally occupied by the United Kingdom. The international community recognized that the islands were the subject of a dispute over sovereignty. The General Assembly and the Special Committee on Decolonization had adopted many resolutions urging the parties to resume negotiations with a view to finding, as promptly as possible, a just, peaceful and definitive solution to the dispute.

29. Argentina rejected the opinions to be found in paragraphs 5, 87, 103, 104 and 161 of the memorandum with respect to the Malvinas, since they did not conform to the historical facts. For example, paragraph 87 stated that Spain had "abandoned" the islands. That statement was incorrect and overlooked the fact that the Republic of Argentina had succeeded to the Spanish title. Moreover, in its diplomatic protest to the United Kingdom in 1885, Argentina had invoked the Nootka Sound Convention of 1790; hence, both parties to the dispute agreed that the Convention applied with respect to the Malvinas.

30. A study of State practice should be based on consultations with Governments. When such practice involved two or more States, comments on practice could only be useful if based on the practice of both States concerned and hence impartial. In analysing the effect of armed conflicts on the termination or suspension of a treaty, it was important to establish which obligations under the treaty remained in force during or following armed conflicts. Such obligations should be differentiated clearly from acknowledgements of factual or legal circumstances that the parties to a treaty had made upon concluding it. The principle of good faith required that the acknowledgement of facts or circumstances, such as the recognition of the existence of a dispute by a State party to the dispute, could not be changed by armed conflict.

31. The principle of continuity of treaty obligations, as reflected in draft article 3, was fundamental. Argentina encouraged the Commission to continue its work on the subject, approaching the law of treaties in the light of the prohibition against resort to the threat or use of force embodied in the Charter of the United Nations.

32. **Ms. Wilcox** (United States of America) said it was encouraging to see that the Special Rapporteur, in his set of draft articles on the effects of armed conflicts on treaties, had adopted an approach that would encourage continuity of treaty obligations where there was no genuine need for suspension or termination. Draft article 4, a key article, reflected the notion that the intention of the parties at the time of the conclusion of the treaty should be determinative. Her Government felt that that approach was problematic, since parties negotiating a treaty generally did not consider how its provisions might apply during armed conflict. It would be more sensible to consider other factors, including the object and purpose of the treaty, the character of specific provisions and the circumstances relating to the conflict, rather than to rely on a presumption of intention that might not exist.

33. With regard to draft article 5, her delegation agreed with the suggestion that reference should be made in the article to the principle enunciated by the International Court of Justice in its advisory opinion on *Legality of the Threat or Use of Nuclear Weapons* to the effect that, while certain human rights and environmental principles did not cease to apply in time of armed conflict, their application was determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which was designed to regulate the conduct of hostilities.

34. Draft article 7 listed 12 categories of treaty the object and purpose of which involved the necessary implication that they would continue in operation during an armed conflict. Such a categorization of treaties was problematic, since treaties did not automatically fall into one of several categories. Even classification of particular provisions was difficult, since the language of similar provisions and the intention of the parties could differ from treaty to treaty. It would be more useful, for the guidance of States, to enumerate the factors that might lead to the conclusion that a treaty or some of its provisions should continue or should be suspended or terminated in the event of armed conflict. Her delegation intended to respond to the Commission's request for more information concerning contemporary practice on the topic prior to its next session.

35. Her delegation congratulated the Commission for adopting on first reading a complete set of draft articles on diplomatic protection and was pleased that the Commission had decided to omit the clean hands

doctrine from the draft articles. The United States would submit further written comments to the Commission as requested. Her delegation's view was that the current project on diplomatic protection should be limited in scope to the codification of customary international law, or at most should vary from or supplement it only to the extent warranted by sound public policy considerations supported by a broad consensus of States.

36. On the topic "Fragmentation of international law", her delegation agreed that it was not suitable for draft articles and approved the emphasis on ensuring that the outcome of the Commission's work should be of practical use to legal experts in foreign offices and international organizations and to judges and administrators coping with questions concerning conflicting and overlapping obligations resulting from different legal sources. With respect to the issue of hierarchy in international law, her delegation agreed that the Study Group should not seek to produce a catalogue of norms of *jus cogens*, instead leaving the full content of the principle to be worked out in State practice. It was important that the Commission should not adopt any rule that could be interpreted as limiting the primacy of Charter obligations or the authority of the Security Council. In view of the uncertainty regarding what fell under the categories of *jus cogens*, obligations *erga omnes* and Article 103 of the Charter of the United Nations, general pronouncements about the relationship among those categories should be avoided.

37. **Ms. Mas y Rubí Spósito** (Bolivarian Republic of Venezuela) said, with respect to the topic "Reservations to treaties", that draft guideline 3.1.2, which defined the term "specified reservations", unduly limited the right of States to formulate reservations to the treaty which were not incompatible with its object and purpose. It was customary in conventions adopted within the context of the United Nations to include a standard clause providing for the compulsory jurisdiction of the International Court of Justice in case of dispute, but allowing a State to opt out of the provision by means of a declaration to that effect. Such a formal declaration would constitute a reservation that might be considered to fall into the category of "specified reservations" mentioned in draft guideline 3.1, subparagraph (b), whose main characteristic was that they excluded the possibility of formulating other reservations. In other words, if a treaty permitted only specified reservations, it was clear that other reservations were prohibited. The conclusion to be drawn from the draft guidelines as they stood would be that any convention adopted in the context of the United Nations and including such a clause would be a "closed" instrument that would only allow for the formulation of that reservation and no other. To avoid that result, a paragraph should be added to draft guideline 3.1.2 providing that a reservation made to a treaty in order to exclude the compulsory jurisdiction of the International Court of Justice should not be considered as falling within the definition of "specified reservations" for the purposes of draft guideline 3.1.

38. Her delegation believed that the topic "Unilateral acts of States", although difficult and controversial, was susceptible to codification and progressive development. The systematic examination of State practice in the various types of unilateral acts was valuable. The context in which the acts were formulated, the persons formulating them, their oral or written form and the reactions of addressees and third parties were all important factors in determining their legal effects. Her delegation wished to stress the importance of defining unilateral acts and favoured a definition of a unilateral act as a unilateral statement by a State, formulated by a person competent to represent and commit the State at the international level, by which that State expressed its will to create obligations or produce other legal effects under international law. Progress could be made on the topic at the next session of the Commission if the Special Rapporteur were to present some preliminary conclusions accompanied by examples of practice.

39. With regard to the topic "Shared natural resources", her delegation considered that the changes and additions proposed by the Special Rapporteur added precision to the draft articles from the hydrological and geological standpoint with respect to the scope of the groundwaters to be covered by a convention and clarified the framework in which the sustainability of groundwater sources would be addressed. The new draft article 2, "Use of terms", made the definitions clearer from both a technical and a legal standpoint. It seems evident that every State would exercise jurisdiction and permanent sovereignty over the portion of the aquifer that was in its territory and would bear in mind the commitment to ensure equitable and reasonable utilization of the aquifer, as

provided for in draft article 5, within the framework of sustainable development. However, prevention of harm, the obligation not to cause harm and responsibility and compensation for harm caused to another aquifer State were aspects that needed to be further developed.

40. An important feature of the draft articles was the regular exchange of data and information among aquifer States to share and improve knowledge of the aquifer systems. In that regard, a number of Latin American States had already developed arrangements to manage transboundary groundwaters, such as the Guaraní Aquifer System Project. Based on that experience, a transboundary aquifer programme for the Americas had been established with the support of the Organization of American States, the United Nations Educational, Scientific and Cultural Organization and the International Hydrological Programme. The Bolivarian Republic of Venezuela had been working with Colombia and Brazil, respectively, to study possible transboundary aquifers it shared with those States.

41. However, her delegation reiterated its objection to inclusion of the term "shared natural resources" in a possible convention, since it did not see how States could share sovereignty over natural resources. For that reason, it concurred with the view that it was essential to include a reference in the draft articles to the principle of the permanent sovereignty of States over their natural resources.

42. **Mr. Zabolotskaya** (Russian Federation) said that the Commission's report raised a number of issues connected with the effects of armed conflicts on treaties which deserved close attention: whether the outbreak of an armed conflict terminated the operation of a treaty with respect to the parties to the conflict; the effect of the legality of the conduct of the parties to an armed conflict on the operation of a treaty to which they were parties; and the various consequences of armed conflicts for treaty parties and States parties and non-parties to the conflict. The Commission had been right to consider the topic in the context of the international law of treaties. It should not take up issues already regulated in other branches of law: for example, by defining the concept of armed conflict or determining cases of lawful and unlawful use of force. The scope of the topic should not extend to armed conflicts of a non-international nature, for problems arising in such situations could be solved on the basis of the Vienna Convention on the Law of Treaties.

43. While her delegation could agree that the outbreak of an armed conflict did not necessarily terminate or suspend the operation of a treaty between the States parties to the armed conflict and non-party States, there might still be an automatic element in the effects of the armed conflict on the relations between the parties to that treaty.

44. The concept of the intention of the parties was extremely subjective and could hardly be applied in practice without qualification. That was clear from draft article 7, which listed the categories of international treaty which could not be terminated by an armed conflict. In general terms, the Russian Federation believed that the Commission's work on the topic was making a significant contribution to the clarification of the law.

45. On the topic "diplomatic protection", her delegation agreed with the Commission's conclusion that the "clean hands" doctrine should not be included in the draft articles. It hoped that at its next session the Commission would complete its work on the draft articles.

46. **Mr. Ayua** (Nigeria) welcomed the 25 draft articles on the law of transboundary aquifers, and endorsed the prominence they accorded to bilateral and regional arrangements, and the emphasis on equitable and reasonable utilization, the obligation not to cause harm and the regular exchange of data and information. His delegation noted with keen interest draft article 18, providing for scientific and technical assistance to developing countries, and agreed with the provisions in draft articles 19 and 20 on emergency situations and protection in time of armed conflict.

47. Turning to the topic "Effects of armed conflicts on treaties", he said that his delegation supported the view that the draft articles should be compatible with the purposes and principles of the Charter of the United Nations and should take into consideration, in particular, the wrongful character of recourse to force in international relations and the fundamental distinction between aggression and legitimate individual or collective self-defence or the use of force *in the context of the collective security system* established by the United Nations. It also agreed that the topic should be approached within the context of the Vienna Convention on the Law of Treaties, and,

that the scope of the work should include both internal and international armed conflicts, since some internal conflicts usually had wider regional or international repercussions, or both. His delegation agreed that treaties entered into by international organizations should be included within the context of the topic, and looked forward to the Special Rapporteur's fuller examination of such issues in his next report.

48. With regard to the topic "Responsibility of international organizations", his delegation supported draft article 8, which would require the organs, members and staff of an international organization to act in conformity with their mandates. In his fourth report, the Special Rapporteur should consider the possibilities for remedy and compensation for injuries arising from breaches of those mandates.

49. Concerning the expulsion of aliens, he said that the problems associated with the treatment of aliens were of abiding relevance, especially in the contemporary world where national interests had to be reconciled with the reality of globalization and a multiplicity of relevant international instruments. The preliminary report by the Special Rapporteur was a good basis for further work on the topic. Although the right of sovereign States to expel aliens, particularly for security reasons, was guaranteed by law, that right must be exercised in accordance with due process, the act of expulsion must be formal in order to allow for appeal, and the persons expelled should not be subject to torture or abuse. Compulsion and detention must be avoided, except when the alien refused to leave or tried to escape from the control of State authorities.

50. The decision to expel must not be based on any religious, ideological, ethnic or racial consideration, or any other reason mentioned in the various human rights and related instruments. A future set of draft articles should include a provision allowing for the application of regional and international treaties to provide further protection to the persons concerned. In particular, measures should be established to protect the property rights of expellees. Furthermore, expulsion should be carried out only after due consultation and exchange of information with the expellee's home country.

51. As to the other decisions and conclusions of the Commission, his delegation welcomed and encouraged the interactions, during the fifty-seventh session, between the Commission and the other bodies mentioned in its report (A/60/10, paras. 503-509), which facilitated the realization of its mandate. In addition, his delegation welcomed the annual holding of the International Law Seminar, which played a crucial role in introducing young lawyers, especially from developing countries, to issues of international law and the work of the Commission, and appreciated the voluntary contributions to the Seminar from Member States.

52. It was regrettable that few representatives of developing countries participated in the discussion of the Commission's report. Moreover, there was often a poor response from those countries to requests for comments from Member States. That trend, if not stemmed, could militate against universal acceptance of any instruments resulting from the deliberations of the Commission and the Sixth Committee, since countries which had not been participating — probably due to a lack of capacity — might not see the need to sign and ratify instruments in whose formulation they had played little or no part. The Commission, the Sixth Committee and the Office of Legal Affairs should seek to identify the root causes of that problem and take joint proactive measures to address it, including, for example, regular seminars on topics studied by the Commission, jointly hosted with regional and subregional bodies. Efforts should also be made to ensure that the Commission's reports were issued at least two months before their consideration by the Sixth Committee, thus allowing sufficient time for them to be sent to Governments for consideration.

53. **Mr. González** (Mexico), referring to the topic "Diplomatic protection", said that the Special Rapporteur's examination of the feasibility of applying the "clean hands" doctrine was timely and useful, and his approach was correct. To determine whether that doctrine was applicable exclusively in the context of the exercise of diplomatic protection and hence should be included in the draft articles, the Special Rapporteur had studied its applicability to disputes involving inter-State relations properly so-called and to diplomatic prevention, and had examined cases in which the doctrine had been in the context of diplomatic protection. On the basis of his findings, contained in his sixth report (A/CN.4/546), the Special Rapporteur had concluded — rightly, in the Mexican delegation's regard — that although the "clean hands" doctrine might be of importance with regard to the determination of the international responsibility of States, it did not constitute *lex specialis* applicable to

diplomatic protection and therefore should not be included in the draft articles.

54. Turning to the topic "Shared natural resources", he said that once the Commission had completed its work on transboundary groundwaters it should consider very carefully whether to continue by taking up the sub-topics relating to oil and gas. His delegation agreed that the work on groundwaters should take into account, to a certain extent, the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses; nevertheless, groundwaters were different from surface waters and consequently the development of a legal framework for transboundary aquifers should respect their environmental features and vulnerability. His delegation also agreed that the draft articles should not cover the obligations of non-aquifer States. However, the precautionary principle — which was emphatically a "principle" — should be mentioned somewhere in the instrument. The preamble, for instance, might include a paragraph describing it, similar to the one in the preamble to the Convention on Biological Diversity, sparing the Commission long discussions as to whether the precautionary principle was a "principle" or an "approach."

55. The preamble might also contain a reference to General Assembly resolution 1803 (XVII) on permanent sovereignty over natural resources. Moreover, the question of transboundary aquifer systems should be viewed through the prism of sustainable development; and therefore reference should be made to principle 2 of the Rio Declaration on Environment and Development, which set out the sovereign right of States to exploit their own resources and their responsibility to ensure that activities within their jurisdiction did not cause damage to the environment of other States. It was also important to consider evolving State practice on that matter. Although such practice was admittedly scarce and often embryonic, juridical and institutional developments in the various regions should form the basis for the Commission's work on the topic.

56. His delegation supported the prominence given to such matters as the obligations of aquifer States to cooperate and not to cause harm and the need to ensure equitable and reasonable utilization. It agreed that the draft articles should emphasize bilateral and regional agreements, as long as such agreements were compatible with the general principles set out in the articles, and supported the inclusion of the reference to other activities that had or were likely to have an impact on transboundary aquifers and aquifer systems.

57. His delegation also supported the distinction drawn by the Special Rapporteur between recharging and non-recharging aquifers, although that distinction must extend to the threshold applicable to the obligation not to cause harm. The threshold for recharging aquifers should be significant harm, whereas for non-recharging aquifers the threshold should be lower, because of the vulnerability caused by the low amount of water recharge. Especially important was the obligation to provide compensation when harm was done to a transboundary aquifer. His delegation therefore requested the Commission to formulate the obligation to compensate in binding terms, since as it stood the relevant draft article weakened the obligation. In managing aquifers, aquifer States should consult with and provide information to populations dependent on their equitable and reasonable utilization.

58. The Commission should include the topic of technology transfers in the draft article on scientific and technical assistance to developing countries. Furthermore, the importance of ensuring water quality should be considered one of the factors relevant to the equitable and reasonable utilization of groundwaters, in conformity with the obligation to protect and preserve ecosystems under draft article 12.

59. His delegation agreed that the final form of the draft should be considered at a later stage. If it took the form of a legally binding instrument, the wording should be adjusted accordingly.

60. **Mr. Lamine** (Algeria), referring to the topic "Responsibility of international organizations", said that his delegation agreed that the draft articles on the topic should follow the general pattern of the articles on Responsibility of States for Internationally Wrongful Acts with respect to the existence of a breach of an international obligation and to responsibility, and therefore supported the approach taken by the Special Rapporteur. His delegation favoured the inclusion in the draft articles of a provision on aid or assistance given by a State to an international organization in the commission of an internationally wrongful act, and on cases in which a State directed and controlled, or coerced an international organization in the commission of an internationally wrongful act. The responsibility of the State was entailed when it participated deliberately in the internationally wrongful

conduct of an international organization by providing it with aid or assistance and the breached violation was also opposable to the State concerned.

61. With regard to the expulsion of aliens, an almost complete consensus seemed to have emerged in the Commission regarding the approach to be taken to that topic. His delegation supported the approach taken to the main issue, namely reconciliation of the right to expel with the requirements of international law and, in particular, human rights law

62. With reference to the other decisions and conclusions of the Commission, the reconstitution of the Working Group on the long-term programme of work was welcome, as was the inclusion of the topic "The obligation to extradite or prosecute (aut dedere aut judicare)" in the Commission's current programme of work and the appointment of a Special Rapporteur for that topic. The obligation to extradite or prosecute was ripe for codification and was of crucial importance for international judicial cooperation in criminal matters, especially with regard to terrorist and other crimes threatening the international community. Although the obligation to extradite or prosecute was embodied in many international legal instruments, especially the various sectoral counter-terrorism conventions, that principle derived from customary international law. The approach and the preliminary plan of action proposed by the Special Rapporteur were acceptable, because they incorporated new trends in international law and the concerns of the international community.

63. As to the topic "Shared national resources", his delegation supported the structure and approach adopted in the draft articles, and considered that in view of the paucity of State practice the Commission should not attempt to codify that area of international law but rather should focus on its progressive development on the basis of the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses. In addition, his delegation agreed that the draft articles should be viewed as an application of general international law, and that the principle of permanent sovereignty over natural resources deserved to be discussed in the operative part of the draft articles, in particular since precedents existed. Concerning draft article 14 on prevention, reduction and control of pollution, the Special Rapporteur's approach was a wise one. The precautionary principle, important as it was, must not be interpreted so as to constitute an obstacle to economic and scientific activity.

64. Turning to the topic "Effect of armed conflicts on treaties", he said that the notion of armed conflict should be defined in the widest possible manner, to include blockades as well as military occupation unaccompanied by violence. It was doubtful, however, whether the topic should include internal armed conflicts, despite the difficulty of determining whether armed conflicts were international or internal in nature. As to the indicia of susceptibility to termination or suspension of treaties in case of an armed conflict, his delegation supported the criterion of intention, which took the context of each situation into account, and felt that draft article 10 should be reviewed, so as to take into consideration the legality of the conduct of the parties to an armed conflict.

65. **Mr. Momtaz** (Chairman of the International Law Commission) said that the detailed and substantive comments made by the members of the Committee would be very useful. However, as the Commission worked as a collective body, it was not appropriate for its Chairman to respond to comments on policy or technical issues. The Commission would of course pay close attention to comments from Governments: in fact, it relied on such feedback to guide its work. That was particularly important as the Commission moved on to topics for which there was less State practice or generally accepted customary law.

66. The Commission intended to complete its consideration on second reading of the topics "International liability for transboundary harm" and "Diplomatic protection". As its second readings were based essentially on written comments, he urged Governments to submit their comments as soon as possible.

Agenda item 159: Observer Status for the Ibero-American Conference in the General Assembly (*continued*) (A/60/233; A/C.6/60/1/Add.2 and A/C.6/60/L.10)

67. *Draft resolution A/C.6/60/L.10 was adopted.*

Agenda item 78: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (*continued*) (A/60/441; A/C.6/60/L.5)

68. **Mr. González** (Mexico) said that the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law contributed to the training of international lawyers in all countries, particularly the developing countries. Among the activities carried out under the Programme

described in the report by the Secretary-General on the item (A/60/441) his delegation drew particular attention to the annual International Law Seminar, which enabled new generations of lawyers to acquaint themselves with the topics studied by the International Law Commission, the publications on the Organization's legal practice, and the United Nations Audiovisual Library in International Law. In addition to their direct effects, the activities carried out by the United Nations had a multiplier effect on national promotional and teaching work. In Mexico, such activities had enhanced the quality of the training seminars for academics.

69. In view of the financial constraints on the maintenance of the activities, it was essential for countries to make voluntary contributions to the Programme. Relatively small amounts had a major impact on the attainment of the purposes of the United Nations. Mexico itself had made a number of modest contributions, demonstrating its commitment to improving knowledge of international law and its strict application.

70. **Mr. Makarewicz** (Poland) said that the item had become particularly topical with the growing acceptance by the international community of the rule of law as a fundamental basis of international relations. Governments had reaffirmed their commitment to international law in the World Summit Outcome. It was noteworthy in that context that "A just world under law" would be the central theme of the centennial meeting of the American Society of International Law in 2006. Such meetings provided an opportunity for reflection on the responsibility of international lawyers to bring about a more just, safe and prosperous world. Such an achievement would also require a concerted effort by States, governmental and non-governmental organizations, the business community and civil society. In that same connection, in 1999 the Secretary-General had identified the consolidation and advancement of international law as the Organization's second most important goal, after peace and security.

71. The commitment to promoting respect for international law must be strengthened, and the policies of States and international organizations must be consistent with that aim. The only way of dealing with those who violated international law was to disseminate knowledge of its basic principles and its spirit to the millions of potential victims of violations. That was why the teaching of international law was so important. The 1997 resolution of the Institute of International Law on the teaching of public international law could serve as a model for the standardization of the teaching of the subject.

72. He wished to pay a tribute to the eminent Polish jurist, Professor Manfred Lachs, whose work *The Teacher in International Law: Teachings and Teaching* should be the main source of knowledge on the subject for international lawyers, teachers and politicians. Professor Lachs had stressed the importance of the teaching of law and the need to strengthen the moral commitment of internationalists to shaping a more humane world. Despite all the activities described in the Secretary-General's report, much remained to be done not only by the United Nations but also and primarily by Member States.

73. It was in the common interest to provide free access to the website of the United Nations Treaty Collection. His delegation welcomed the news that access to the database would be expanded.

74. **Mr. Mwandembwa** (United Republic of Tanzania) said that it was impossible to overemphasize the role of the Programme of Assistance in helping developing countries to build up their capacity. Furthermore, the various activities described in the Secretary-General's report had also provided a basic grounding for persons who would serve the international community in the field of international law.

75. His delegation commended the activities of the Office of Legal Affairs in support of the Programme, in particular the drafting and distribution of United Nations legal publications. The United Nations Institute for Training and Research also deserved commendation in that connection.

76. The United Republic of Tanzania extended its sincere thanks to the Member States, listed in section IV of the report, which had made generous contributions to the Programme in the biennium 2004-2005. It had always advocated the Programme's expansion and an increase in the resources provided under the regular budget to the Office of Legal Affairs.

77. **Ms. Zabolotskaya** (Russian Federation) said that the Russian Federation had always attached importance to the work done by various bodies within and outside the United Nations system under the Programme of Assistance. The Programme's seminars and fellowships

offered opportunities for young international lawyers not only to improve their qualifications but also to discuss problems of international law in an informal setting.

78. The Russian Federation was a firm advocate of the application of the principles of international law in international relations. Indeed, the adoption of the Charter of the United Nations had been a milestone in that process. In June 2005 Russia had hosted an international conference to mark the sixtieth anniversary of the adoption of the Charter, which had conducted a productive discussion of various aspects of contemporary international law. The role of international law must be steadily enhanced, and the Programme would make a major contribution to that undertaking.

The meeting rose at 12.05 p.m.